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IN THE HIGH COURT OF JUDICATURE: CHHATISGARH

AT BILASPUR.

...

W.P.NO. 571/2001

PETITIONER: Bhartiya Koyala Adhikari Sangh Branch South Eastern Coal Field Ltd. through Convener Govind Prasad Tiwari, aged about 55 years S/o Shri Jagannath Prasad Tiwari, Personnel Manager, South Jhagrakhand Colliery CJM Office Hasdeo Area Tahsil Manendragarh District Koriya Chhatisgarh.

V/s

R. No. 6-4-01 received by Shri A.K. Pole Bajpai dated 16.4.01

RESPONDENTS: 1. Coal India Limited through its Chairman, Coal Bhawan, 10 Netaji Subhash Road, Calcutta.

2. Chief General Manager (Personnel) Coal India Ltd. Coal Bhawan, 10 Netaji Subhash Road, Calcutta.

3. South Eastern Coal Field Ltd., through its Chairman-Cum-Managing Director, Sheepat Road Bilaspur.

PETITION UNDER ARTICLES 226/227 OF THE CONSTITUTION OF INDIA:

PARTICULARS OF PETITION

1. Particulars of petitioner:

HIGH COURT OF JUDICATURE CHHATTISGARH, AT BILASPUR

Writ Petition No.570 of 2001

Bhartiya Koyala Adhikari Sangh

Vs.

Coal India Limited & others

Writ Petition No.571 of 2001

Bhartiya Koyala Adhikari Sangh

Vs.

Coal India Limited & others

Writ Petition No. 572 of 2001

Bhartiya Koyala Adhikari Sangh

Vs.

Coal India Limited & others

Writ Petition No. 573 of 2001

Coalmines Officers Association of India

Vs.

Coal India Limited & others

Present:

For Petitioners : Shri S.K. Gangele, Advocate
Shri Manindra Shrivastava, Advocate

For Respondents : Shri P.S.Nair, Senior Advocate
Shri P.S. Koshy, Advocate.

O R D E R

By W.A.Shishak, C.J.-

In these four writ petitions order of transfer dated 9.4.2001 issued by the respondent no.1 has been assailed. In the said order of transfer as many as 595 high ranking officers of Coal India Limited are involved. The said transfer is from

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one company to another being located in different areas of the country. After hearing counsel representing the parties it is now clear that barring about fourteen officers the rest have already joined their places of posting in compliance with the order of transfer.

2. Shri S.K. Gangele appears for the petitioners in W.P.No.570, 571 and 572 of 2001 and Shri Minindra Shrivastava for the writ petitioner in W.P.No.573 of 2001. Shri P.S. Nair learned Senior Counsel with Shri P.S.Koshy appears on behalf of the respondents.

3. Though Shri P.S. Nair learned counsel for the respondents has urged that the petitions should be decided on the question of maintainability and though I have indeed given him some time in this regard to make his submissions as regards the preliminary objection raised on behalf of the respondents, having felt that it would be more convenient and appropriate for me to hear the entire petition on merit I have heard the learned counsel representing the parties at length. It may also be stated at this stage that in the present order of transfer only officers of the Grades of M-1 and M-2 are involved. It may further be stated that petitioners in W.P.No. 570/2001 and W.P.No. 571/2001 have already joined their places of posting. At the time of hearing Shri Gangele has not made any specific submission in respect of the aforesaid two writ petitions though generally the order of transfer has been impugned. Main submission has been made with reference to W.P.No. 572/2001. In this petition the petitioner is a registered association. Subsequently, an intervention petition has been filed by one A.K. Patnaik who is said to have been affected

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by the order of transfer. The name of the said officer figures at Sl.No. 33. It is contended that Shri Patnaik was appointed by Coal India and that for the first time after his appointment he has been transferred to Bharat Coking Coal Co. Limited.

4. Coal India Limited is a holding company vide paragraph 11 of the return filed by the respondents. There are eight subsidiary companies, namely, (1) Western Coalfields Limited; (2) South Eastern Coalfields Limited; (3) Northern Coalfields Limited; (4) Bharat Coking Coal Company Limited ; (5) Eastern Coalfields Limited; (6) Central Coalfields Limited; (7) Mahanadi Coalfields Limited; and (8) Central Mines Planning and Designing Institute Limited.

5. Shri Gangele submits that the present is not a case of simple and normal transfer. According to him, a policy of pick and choose has been followed. It is also further submitted that the reason for such transfer has not been clearly disclosed. Further submission of Shri Gangele is that though the petitioners are sought to be transferred, similarly situated persons holding similar and equivalent ranks of office under the same company have not been touched. One main grievance that has been taken in the present case is that the petitioners have been transferred from profit making companies to loss making companies. Therefore, they have apprehension that their future prospects shall be affected. Hence, it is contended that the transfer has been made malafide.

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6. Shri Manindra Shrivastava appearing for the 66 officers in W.P.No. 573 of 2001 submits that the petition has been filed in representative capacity. The manner in which petition has been filed has been vehemently criticised by Shri P.S. Nair appearing for the respondents. According to Shri Nair, each officer is to approach this Court by filing separate writ petitions and by affixing requisite Court fees required under the relevant provision of law. According to Shri Nair even on this ground alone the writ petition should go. Shri Shrivastava submits that the inter-company transfers sought to be made in the present case are abnormal and they have not been done in a routine normal way. According to Shri Shrivastava, large scale transfer is to be avoided. It has also been submitted by Shri Shrivastava that while issuing the impugned order there has been infraction of the policy made by the company. It is also further submitted that none of the officers has completed twenty years of service and, therefore, the order of transfer is bad. I shall advert to the submission as regards the infraction of policy of transfer when I examine the submissions made on behalf of the respondents. Shri Shrivastava also supports the submission made by Shri Gangele that the impugned transfer by which the petitioners have been transferred from profit making companies to the loss making companies is not bonafide and has not been made in public interest, but in fact it has been made malafide inasmuch as the petitioners' interest is likely to be affected in the event the loss making companies are ultimately wound-up. It is the submission of Shri Shrivastava that in fact there is no decision by the competent authority to transfer certain officers from profit

making companies to the loss making companies. According to Shri Shrivastava, the entire exercise of transfer has been made only by the Director and not by the competent authority though the Chairman of the company has given his endorsement on the document prepared by the Director. The further submission of Shri Shrivastava is that the order of transfer has often been used by the employer as a powerful weapon while dealing with the employees particularly when the employer is inclined to accommodate in some more comfortable places a chosen and favoured few and such action can bring about frustration in the matter of service of very many honest officers. A submission, therefore, has been made that the relevant records where the process of transfer was initiated should be called for to see what actually motivated the authority to pass the impugned order of transfer. This submission has been made on the basis that the order of transfer has been issued not in public interest but for some extraneous considerations.

7. In the light of the submissions recorded above, it is necessary that we now examine the order of transfer. Invariably in the order of transfer in respect of the officers the following order was issued on the same day i.e. 9.4.2001 :-

> " ORDER
>
> The following Executives of Mining discipline in M-1 grade are hereby transferred in their existing grade/ capacity to the company as indicated against each with immediate effect. "

Names of the transferred officers are printed thereafter. It is thereafter mentioned :-

" The above executives should be released from the respective company immediately, but not later than 20th April, 2001. On being released from their present company of posting the above executives (except Sl.No.80 & 81) will report to the Chairman/Mg. Director of the respective subsidiary company where they have been transferred for their further assignment. Sl. No. 80 & 81 will report to CGM, NEC, Guwahati for their further assignment.

This issues with the approval of the Competent Authority. "

8. In order to appreciate the issue involved in the present petition, it is necessary that we look at the decision minuted in the 1st CMDs meet held on 3rd March, 2001. Transfer policy recorded at the said meeting is at para 4.1 as follows :-

" 4.1. Transfer Policy

Director (P & IR) explained that as per the existing transfer policy of 1994, executives of M1, M2 and M3 grades are required to be transferred inter-company on completion of 10 years stay in a company. To avoid large scale transfer, 20% of executives satisfying the above criteria are being transferred from one company to another every year. However, over the years a large number of executives who have completed 20 years and above in M1, M2 and M3 grades and who have more than 2 years to retire are still working in the companies.

After discussion it was decided that in the first phase those executives in M1, M2 and M3 grades who have completed 22 years or more service in one company and having more than 2 years to retire will be transferred to other subsidiaries. This will be subject to the conditions mentioned in the transfer policy."

At the 3rd CMDs meet held on 1st April, 2001 the minutes of the 1st CMDs meet held on 3rd March, 2001 were considered. It may, however, be stated that

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as regards the length of service rendered by an officer at a particular place some change was effected. Such change has been recorded in para 5.e. as follows :

> " 5.e. In the earlier CMDs' Meet, it was decided that executives of M1, M2 and M3 grades staying in a particular company for more than 22 years will be transferred intercompany. It was decided to revise the criteria of period of stay in a company from 22 to 20 years."

Consequent to the decisions taken by the CMDs as aforesaid, the following order came to be issued by the Director (P & IR) on 5.4.2001 :

> " In terms of the decision of 1st CMDs meet held on 01.03.2001 and subsequent decision of 3rd CMDs meet held on 04.04.2001 in connection with the transfer of executives of M1, M2 & M3 grades in different disciplines, the following norms is being adopted in effecting the transfer of executives :
>
> 1) The officers who have completed 20 years of service in the company.
>
> 2) Officers of WCL, SECL, MCL and NCL will be transferred to BCCL, ECL and CCL. The vacancy so caused in these four subsidiaries will be filled up by transferring executives from BCCL, ECL and CCL based on their station seniority and the remaining executives of DCCL, ECL and CCL will be rotated within these three subsidiaries.
>
> 3) The following categories of executives will be exempted from transfer this year:
>
> i) Those who have less than two years to retire as on 31.03.2001.
>
> ii) Projects of more than 100 crores belonging to Mining & Excavation Disciplines.
>
> iii) World Bank Projects belonging to Mining & Excv.

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iv) Longwall and New Technology belonging to Mining and E & M disciplines.

v) R & R executives.

vi) Medical Officers of M1, M2 & M3 grades.

4) CMPDI executives.

The executives posted in CMPDIL are performing specialised nature of jobs and most of them cannot be gainfully utilised in producing companies. To the extent possible they will be re-deployed/transferred within CMPDIL. Those whose services can be utilised in other subsidiaries will be transferred. "

On the body of the said order, the Chairman endorsed as "agreed". As stated above, Shri Manindra Shrivastava and Shri S.K.Gangele have strenously urged that the aforesaid order was not authorised and the Director is not the competent authority to have issued the above order. Shri P.S. Koshy,learned counsel for the respondents, submits that the above order was issued by the Director (Personnel) as it is he who should take necessary action after the competent authority had already taken policy decision as regards transfer. It is the submission of Shri Koshy that the Director's action is simply by way of implementation of the policy decision. It is further argued by Shri Shrivastava and Shri Gangele that since the above order was sought to be communicated to the Minister of Coal it must be inferred that the order of transfer has been issued with some ulterior motive and for some extraneous consideration, and not bonafide. It may be reiterated that Shri Shrivastava and Shri Gangele submit that there is a proposal to refer the loss making company of BCCL to BIFR because net losses of the company have exceeded the net wealth of the company and that there is a definite proposal

in Coal India Limited to close the loss making companies. This submission has been made with reference to the recommendation of the Geetha Krishnan Committee that there is a proposal to make fully Board managed companies seven coal producing subsidiaries of Coal India Limited. According to the learned counsel, all the subsidiary companies including the SECL would virtually become independent companies. In such event, according to the learned counsel, the interest of the petitioners will certainly be adversely affected.

9. Shri Koshy, learned counsel for the respondents, refers me to Annexure-R/1 of the return filed in W.P.No. 573/2001 to bring home the fact that each of the officers holds transferable post inasmuch as in the terms of appointment invariably this condition is stipulated. The said Annexure-R/1 is dated 30th March, 1977 addressed to one Shri George Philip in the matter of his appointment by the Chief of Personnel Division. Relevant for the purpose of the present case is Clause-xvi of the said document which is to the following effect :

> "xvi) You shall be liable to serve in any part of India and will be governed by the rules and regulations of service and administrative orders of the Company in force from time to time."

Shri Koshy further refers me to Common Coal Cadre which is applicable to establishments in Coal India Limited and its subsidiary companies. Transfer Policy is dealt with in Chapter X. Among other things it is stated as follows :

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"With the formation of Coal India Limited, one of the objectives, which the company envisaged, was to form a common coal cadre, which, amongst other guidelines, had specified the principles to be followed regarding transfer of executives. It was envisaged that transfer of personnel in the scales of pay of E-5 and below from one company to another will not normally be effected, though there should be no bar to such transfers on administrative grounds. At higher levels transfer of personnels from one company to another should be freely effected as they would enable the optimum use and development of managerial talent..."

10. Upon careful perusal of the relevant documents, particularly the impugned order of transfer dated 9.4.2001 and the policy decisions taken by the competent authority and the subsequent issuance of order of Director which was endorsed/approved by the Chairman and also the conditions of appointment and transfer policy envisaged in Common Coal Cadre, it seems quite clear to me that the action of the respondents in the matter of transfer of the petitioners cannot really be faulted. After all it is the employer who is entitled to utilise the services of the employees to the best advantage of the employer. In the entire facts and circumstances of the present case, in my view, no malafide can be inferred in issuing the order of transfer. In other words, I am of the view that the order of transfer has been issued within the purview of the policy prescribed in this regard.

11. Though it has been canvassed before me that none of the officers has completed 20 years of service and as such the order of transfer has

been issued in violation of the transfer policy of the company, it has been clarified that though change of name of the company might have taken place, the petitioners indeed have been serving at one place or the other for twenty years or more. Therefore, on this ground the petitioners cannot resist the order of transfer effectively. As against the submission made on behalf of the petitioners that similarly situated persons have been left untouched while issuing the order of transfer, it has been clarified by the respondents that those officers who have not been affected by the present order of transfer are currently engaged in important project works. Such situation is clearly stipulated in the ~~appointment~~ order itself.

12. In the light of the facts that I have recorded above, it is not necessary for me to refer to the decisions cited by the parties in the present case.

13. In the result, in the premises aforesaid, these petitions fail and they are accordingly dismissed, however, without any order as to costs. Interim order stands vacated.

Sd/W.A.SHISHAK
CHIEF JUSTICE
28-5-2001.

Nair/*